AN ESSAY ON THE MIDDLESEX ELECTION:

IN WHICH THE POWER OF EXPULSION Is particularly considered.

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AN

ESSAY

ON THE

Middleſex Election, &c.

WHEN parties are heated, even in the moſt frivolous conteſts, a fair diſpaſſionate enquiry after truth is little to be expected. Whatever opinion is embraced and defended by one ſide, becomes the object of abhorrence with the other; and ſhould any intereſt of

private ambition coincide with this political furor, Truth, Juſtice, and the great intereſts of the community are equally ſacrificed, which ever party may finally prevail.

Singular as the opinion may ſeem, I cannot help thinking, that the true ſource of error, reſpecting the late *Middleſex* Election, has not yet been pointed out. The caſe is new, and difficult. The beſt and ableſt men have thought differently on the ſubject; but as every queſtion reſpecting Government hitherto agitated in this country, has given occaſion to an improvement of our conſtitution, by defining more accurately the rights and privileges of ſome one Order of the State; ſo, I truſt, this uſual good fortune will not now forſake my countrymen; but that in the preſent inſtance, any power,

even though veſted in the Repreſentatives of the people, will with general conſent be done away, if it ſhall be found inconſiſtent with the acknowledged fundamental conſtitution of our regular limited Monarchy.

The Government of this country has undergone a ſignal revolution within a century and an half. The great outlines of the Conſtitution, which before that time lay in a kind of chaos, obſcured by ignorance, or overborne by violence, were then firſt brought to light, and defined. The progreſs of literature, and a more general acquaintance with the bold genius of antiquity, begot a ſpirit of enquiry, which, ſpreading under the ſhade of puritanical abſurdities, deemed no ſubject too ſacred for its reſearches; and though the prevalence of theſe

latter principles, broke down for a time all the barriers of law, we are indebted to the ſtruggles hence produced for that noble liberty, that ſweet equality, and that happy ſecurity, by which the *Engliſh* are at preſent diſtinguiſhed above all the nations of the univerſe. Great and glorious as the ſyſtem of laws then eſtabliſhed muſt appear, it lies not within the compaſs of the human mind, previouſly to define all the rights of the ſeveral orders of the State. A perfect Government (if perfection is attainable on earth) muſt be the growth of ages among the moſt enlightened people. All that human wiſdom can perform, is to watch over it with care; and, when events have diſcovered ſome latent defect, or the particular exerciſe of ſome power heretofore deemed legal has ſhewn it incompatible with the eſſential acknowledged

lodged parts of the conſtitution, to ſupply the one, or remove the other. From ſuch patient touches of art have ariſen thoſe two beautiful ſyſtems of municipal law, which induced the Preſident *Monteſquieu* to call the *Engliſh* and *Romans* the great Legiſlators among nations. And from the like cauſes muſt be gradually formed every political fabric which can promiſe ſecurity to the ſubject or permanency to itſelf. Every alteration therefore is not a raſh innovation; and if the author of the following ſheets ſhould advance any thing which at firſt ſight may appear extravagant, or unuſual, he hopes to be judged only from a peruſal of the whole.

The buſineſs of the *Middleſex* Election may fairly be divided into three diſtinct propoſitions. Have the Houſe

of

of Commons a power to expel? Does Expulſion create incapacity? If a candidate be incapable, does it thence follow that his antagoniſt, with a ſmaller number of votes, ought to be admitted? In determining the two latter queſtions, the Houſe clearly acted in a judicial capacity. Theſe are queſtions incident to the ſeveral Elections, which it was incumbent upon the Houſe to decide, and over which they are acknowledged on all hands to have a ſole excluſive juriſdiction. If they were miſtaken, to what court of appeal ſhall we reſort? None ſuch is known to the conſtitution: None ſuch can ever be eſtabliſhed without overthrowing that independence of the Houſe, on which the ſtability of our Government muſt depend. As well might the people rejudge every election as the preſent. Where the *general* power is

rightly

rightly lodged in proper hands, the *particular* exerciſe of ſuch power muſt always be ſubmitted to, though ſometimes wrong, or every particular queſtion may involve a revolution in the State. What if theſe deciſions ſhould moreover appear to have been made upon the cleareſt principles of juſtice, and perfectly analogous to the judgments of courts of law?

Should theſe points be clear, another yet remains, which alone can be important to the public, becauſe it reſpects the *general* diſtribution of political power, and not a *particular* exertion of acknowledged authority. Let us firſt examine the two judicial queſtions (which, as they are of the leaſt importance, will be found leſs difficult to determine,) that we may return totally

totally unembarraſſed to the more weighty conſideration.

In every community, where laws are enacted, there muſt be ſome mode of compelling the execution; and in free countries the moſt natural, and leaſt oppreſſive, will ever be preferred. The law ſays, an Election of a particular magiſtrate ſhall be made on a certain day; who can oblige the people to proceed to a choice? Shall neglect of attendance be the object of criminal animadverſion? This would render privileges intended for protection the moſt grievous burthen upon the ſubject, if compulſively * exerciſed; or, if neglected, the means of

* It is ſufficient for the purpoſe of protection, to have a right of voting whenever the freeholder ſees occaſion to exerciſe it.

oppreſſing

oppreſſing individuals. The nature of the tranſaction points out the remedy. Let a day and hour be appointed; let due notice be given; let all having a right to vote be admitted, and the reſolution of the majority *preſent* be deemed the ſenſe of the whole. Again, the law requires a certain qualification in the Candidate; for inſtance, an Eſtate of a certain yearly value, that may be preſumed to make the poſſeſſor independent. The Electors have fixed their wiſhes on a perſon not ſo qualified. What is to be done? Shall the head-ſtrong will of thoſe, who pretend not to legiſlative power, render the law a dead letter? Shall they in effect repeal it? If the Election is void, we recur again to the former difficulty. No Election will be made. It becomes neceſſary therefore to carry the ſame principle one ſtep further, and to con-

ſider thoſe who *wilfully* vote for an unqualified Candidate as not voting at all. If the law is thus liberally conſtrued, that none ſuffer but with their eyes open, where is the hardſhip? Their right of ſuffrage is acknowledged; but if an Elector obſtinately refuſes to exerciſe this right in conformity to law, his act being illegal, is conſidered as void, and he is juſt in the ſituation of a man who had altogether neglected to attend.

This reaſoning will be ſtrongly corroborated, by reflecting, that, according to the firſt principles of our conſtitution, a Candidate once choſen, inſtantly loſes all particular connection with his Electors. He is bound to conſult the general intereſts of the community at large, and is in truth equally the Repreſentative of the whole Kingdom. The people of *Great*

Britain are to be governed by the *whole* repreſentative Body. They have a perfect right to expect this Body ſhall be full, becauſe they conſent not to be governed by a leſſer * number. A county therefore refuſing to ſend a Repreſentative to Parliament, does an injury to the whole Kingdom.

* If it be ſaid that the Repreſentative Body can never be fully complete; that vacancies muſt perpetually happen from deaths and other cauſes: We readily acknowledge the truth of this obſervation, and that the neceſſity of diſpatching public buſineſs requires the Houſe ſhould ſit and and act, notwithſtanding theſe *accidental* vacancies. But this does not in any degree impeach the general principle, that a new Election ſhould always be had as ſoon as may be, conſiſtently with the forms requiſite to prevent ſurprize. Some Members likewiſe will ever be abſent; and it might be difficult to find men of independent fortunes willing to accept the truſt, if ſome excuſes were not allowed. We muſt acknowledge therefore as lawful the authority of thoſe regularly aſſembled, and leave the care of compelling attendance to the Houſe itſelf.

It does not even reſt here: the queſtion was not new, either in Parliament, or Weſtminſter-Hall. It had already been adjudged, *that votes given to an unqualified perſon were abſolutely thrown away, and that the firſt qualified candidate upon the poll was duly choſen.* In the two caſes of Serjeant *Comyns* and Mr. *Ongley*, by the Houſe of Commons; in Weſtminſter-Hall, by the ableſt Lawyers * that ever ſate on the bench of juſtice.

That an unqualified candidate is no candidate; and that votes given to the Pope, or any other perſon incapable by law of receiving them, are abſolutely null and void, appear points ſo

* By Lord *Hardwicke*, &c. in the caſe of the King and *Withers*; by Lord Chief Juſtice *Lee*, &c. in the King and Aldermen of *Bath*. In the arguments upon this laſt caſe another authority was mentioned.

incon-

inconteſtible, that it is vain to reaſon with a man whoſe underſtanding does not readily comprehend them. Whether incapacity follows expulſion, or not, ſeems a queſtion of ſomewhat more difficulty. Here the opponents of the meaſure have choſen to make their ſtand. To determine, ſay they, this queſtion in the affirmative, muſt ſhake the very foundations of public ſecurity, and threaten to annihilate the rights of all the Electors in *Great-Britain*. Had they denied the original power to expel; the practice, if invalid, was an error of two centuries hitherto unqueſtioned and unexamined. If the power exiſted, Mr. *Wilkes* was a proper object for its exerciſe. Here would have been no room to repreſent their enemies as the enemies of the conſtitution, themſelves as the only defenders and protectors of our rights.

They

They admit therefore the power unlimited, yet deny the moſt neceſſary conſequence; and hence ariſes all that ſophiſtry in argument, that jargon and nonſenſe, which have diſtracted the minds of the people.

The great ſource of error in all the arguments urged by the minority, and their partizans without doors, is, not ſufficiently diſtinguiſhing different queſtions perfectly diſtinct in their own nature, and the capacity in which the Houſe decides upon each. Thus the author of an ingenious * pamphlet labours through ſeveral pages, to prove Mr. *Wilkes* under no legal diſability previous to the vote of expulſion. No mortal ever thought it. He continued a member ſeveral months: nay, the Houſe of Commons, by the very act of expulſion, acknowledge him as ſuch.

His

* Queſtion ſtated, &c.

His diſability to be re-elected, muſt ſtand or fall upon very different grounds.

The Houſe of Commons is the ſole court of judicature in caſes of election. This authority is derived from the firſt principles of our government, viz. the neceſſary independence of the three branches of the legiſlature. Did any other body of men poſſeſs this power, members might be obtruded upon the Houſe, and their reſolutions might be influenced under colour of determining elections. They have therefore an excluſive juriſdiction, and muſt be in theſe caſes the dernier reſort of juſtice.

Upon Mr. *Wilkes*'s re-election, it became a doubt, whether diſability neceſſarily flowed from expulſion? The

merits

merits of the election depended upon this queſtion; and a conſiderable majority declared the election void. This judgment of a tribunal *ſolely* * competent to decide, muſt now be ſubmitted to, until King, Lords, and Commons, jointly (in whom alone reſides the ſupreme power of the State) ſhall think fit to interpoſe, if we mean not to diſſolve the bands of government, by an appeal to the collective body of the people.

But it is aſked, with an air of triumph, under what head of legal

* The ſame ingenious writer abovementioned, is diſpleaſed with a feeble attempt to diſtinguiſh between *creating* and *declaring* law. The diſtinction is *ſolid* and *eſſential*. The one is an exerciſe of *will* without rule; the other, of *judgment* guided by precedent. The one is a legiſlative, the other a judicial act. An inattention to this, has cauſed infinite confuſion.

diſability, is this conſequence of expulſion to be found? How are the electors to know it? I anſwer, from the records of parliament. How have they learnt, that Judges of the ſuperior courts, cannot be choſen repreſentatives of the people? How are aliens? How are clergymen diſqualified? The Houſe has adjudged them incapable, as the ſeveral queſtions occurred. The exact period when a man ſhall be allowed to manage his own affairs, and to make contracts, ſeems to be merely arbitrary. No good reaſon, perhaps, can be given for the ſucceſſion of the elder brother, or the total excluſion of the half blood. Yet the period of twenty-one years, has been acknowledged the age of diſcretion; and the claim of the elder brother ſubmitted to as law, from the deciſions of our courts of juſtice, becauſe theſe have

hitherto ſtood unaltered † by parliament. Why then ſhall the Houſe of Commons, *acting within their juriſdiction*, have leſs authority than the courts of Weſtminſter-Hall? Are the repreſentatives of the people the only court whoſe determinations are to be treated with contempt?

It is ſaid, "the right of voting is a "*legal* right; it is not given, and

† This is a full anſwer to all arguments drawn from acts of parliament diſqualifying officers in the cuſtoms, &c. The interpoſition of the legiſlature, can only be *neceſſary* to alter the *known* law, or *proper* to declare the law, before any particular caſe occurs. When ſuch caſe happens, it is the peculiar province of *Judges* to decide. Even in acts reverſing the law thus eſtabliſhed, regard is always had to the individual, whoſe right has been once declared by the proper judicature. So tender is the legiſlative power, in a free country, of incroaching upon the judicial!

"cannot

" cannot be taken away by the *occa-*
" *ſional will* of either houſe of parlia-
" ment." Who ever maintained a contrary doctrine? But are not limitations of this right perpetually *declared*, and made known by the judicial determinations of the Houſe? Do not frequent inſtances of this occur in election cauſes? Are not theſe reſolutions binding upon the whole kingdom, even to disfranchiſe ſuppoſed freemen? The deciſions of the Houſe muſt be concluſive upon all the world, and as ſuch have been acknowledged by the legiſlature *.

* See the Stat. 2 Geo. II. c. 24. which enacts, that the right of voting in each place, for the future, ſhall be allowed according to the laſt determination of the Houſe of Commons concerning it. It is remarkable that this was conſidered by the legiſlature as a limitation, not an enlargement, of the power of the Houſe.

Should, however, the late determination be found erroneous, the miſtake can by no means be imputed to the preſent Houſe of Commons. As a court, they have ſtrictly conformed to precedent. The caſe of Sir *Robert Walpole* is fully in point to prove, that a member once expelled, cannot be re-elected during the ſame parliament. An objection has indeed been drawn from the words "for a high "breach of truſt, and notorious cor-"ruption," inſerted in the reſolution; as if this were the ſole cauſe of incapacity; but this conſtruction will appear to the laſt degree trivial and ridiculous. The Houſe admitted him to be a member by the very act of expulſion. Would he otherwiſe have been committed to the Tower? Would not his puniſhment have been left to the courts of law? Had diſability been the conſequence of his *crime*, this diſability would

would have been equally valid and efficacious during life. The effect muſt be equally permanent with the cauſe. How then did he ſit in ſubſequent parliaments? His rank and ſituation prevent a ſuſpicion, that he derived his ſecurity from the inattention of adverſaries.

It is an admirable maxim in our Law, that the authority of precedents, though erroneous in principle, (if none contrary appear) ſhould ever be ſubmitted to, rather than thoſe land-marks be removed, by which the people are enabled to know, and to defend their rights. The exerciſe of will in a judge is tyranny; and ſhould he once be allowed to deviate from the *eſtabliſhed* law, there can be no end of innovation: the known foundations of law once looſened, the rule of right muſt perpetually vary with the varying

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ing conſcience of the judge. Admirably as this maxim is calculated to ſecure the liberty and property of the ſubject, we need not have recourſe to this great corner-ſtone of juriſprudence in the preſent inſtance. The precedent itſelf ſtands upon the moſt ſolid principles of juſtice and law. It is not pretended that the power of expulſion is limited to the firſt, ſecond, or third time. By what law? By what uſage is this limitation eſtabliſhed? Or when have the Houſe of Commons acknowledged its authority? A power of expulſion, indeed, means neceſſarily a power of excluſion, or it can anſwer no purpoſe but to expoſe the poſſeſſors to ridicule and contempt.*

No

* To this argument it has been anſwered, that the King has a power of expelling the whole Houſe, by diſſolving the parliament; yet the electors may again chooſe the very ſame members.

The

No principle of common ſenſe (for I will not uſe the word Law) can poſſi-

The power of convoking and diſſolving parliaments, is of a very different nature, and founded upon very different principles from the claim of the Houſe of Commons to expel. I ſhall explain myſelf in the words of the preſident Monteſquieu, treating of the Engliſh conſtitution. "The legiſlative body ſhould not aſſemble of "itſelf: For a body is ſuppoſed to have no will "but when aſſembled. And, beſides, were it "not to aſſemble unanimouſly, it would be "impoſſible to determine which was really the "legiſlative body, the part aſſembled, or the "other. And if it had a right to prorogue itſelf, "it might happen never to be prorogued; which "would be extremely dangerous, in caſe it "ſhould ever attempt to encroach on the exe-"cutive power. Beſides, there are ſeaſons, "ſome of which are more proper than others "for aſſembling the legiſlative body: it is fit, "therefore, that the executive power ſhould "regulate the time of convening, as well as the "duration of theſe aſſemblies, according to the "circumſtances and exigencies of ſtate known "to itſelf." Spirit of Laws, B. II. Chap. 16.

bly be more evident than that two inconſiſtent rights cannot ſubſiſt at the ſame time. If the Houſe have a right to expel, the electors can have no right in the ſame ſeſſions, within a few days, to force the ſame member back upon them again. This is too abſurd, too ridiculous, to be maintained. It ſeems, however, "that repeated ex-"pulſion, even to the end of the "parliament, would have anſwered "every purpoſe, *without* violating the "right of the electors." Is this the language of the conſtitution? Is this the boaſted preſervative of our liberties? Are the freeholders of *Middleſex* to have no repreſentative? Does juſtice moreover dictate a proceeding, which involves the innocent with the guilty? Which diſtinguiſhes not between the dutiful ſubject, and the

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contumacious freeholder, who acts in defiance of * law? Is no regard due to the reſt of the nation? Have not the whole people of *Great-Britain* a right to expect the repreſentative body, by which they are governed, to be complete? Or ſhall an arbitrary power be exerciſed without rule, by which half the counties of *England* may be totally deprived of their ſhare in repreſentation? Let the Law, by the mouth of the proper judge, ſpeak always, the will of man never. If one man is incapable *by law*, the whole nation beſides is ſtill open to the choice of the freeholders.

* In every government, that muſt be acknowledged as law (till changed by the legiſlature) which is declared ſuch by the proper court inveſted with lawful authority.

What then (will it be ſaid) can the Houſe of Commons *create* law? Can the * reſolutions of one houſe of parliament *make* that man incapable, who confeſſedly before was a *legal* repreſentative of the people? Can ſuch *occaſional will* annihilate the rights both of the electors and the elected, and entitle a candidate to be admitted, who was not choſen by the freeholders?

I admit this power would be completely legiſlative. Nay more, it is a legiſlative power of the worſt ſort; which, from its own nature, *muſt* ever be exerciſed in an arbitrary manner *ex-*

* Whether this be done by one or five ſucceſſive reſolutions, it is the ſame thing. If the *will* of the majority can change the law, their power is legiſlative.

poſt

poſt facto †, with relation to a *particular* object, when the paſſions and prejudices of men are engaged. All I contend for is, that the Houſe of Commons claim no ſuch power, while they exerciſe their acknowledged authority of *judicially* deciding queſtions incidental to the elections of their own members. The conſequences of expulſion were thus adjudged in ſtrict

† This kind of legiſlation has ever been oppoſed, (even in King, Lords, and Commons) by the beſt friends of our conſtitution, upon the nobleſt principles. To make a law after the deſignation of a particular object, is in ſome degree to admit a Government by will. Laws ſhould be general and univerſal, previouſly declared and made known to the people, or we ſhould live in ſociety without knowing the obligations it lays us under. It is the buſineſs of the judicial power to apply the law when the *particular* caſe occurs. See Monteſquieu on the ſeparation of theſe powers.

conformity to precedents, and the rule of law.

Here is no operation of *will* in theſe adjudications: this can only take place, in the original vote of expulſion, when they affect not to have been guided by rule, but acting upon an opinion of *propriety*, *fitneſs*, *expediency*, (the characteriſtics of legiſlation) turned that man out of the Houſe, whom a majority deemed *unworthy* to ſit amongſt them. An inexhauſtible fund of deprivation! An elegant hiſtorian obſerves, that when the parliament recognized the ſupremacy in the latter princes of the houſe of *Tudor*, with an *inherent* power to correct hereſies †, &c. they

† In determining hereſy, the crown was only limited (if that could be called a limitation) to ſuch doctrines as had been adjudged hereſy, by the

they gave an abſolute uncontroulable authority to the crown, which might enter into every part of government. A ſtory will make the application. A member of the Houſe of Commons, being queſtioned in parliament concerning a book, ſuppoſed to contain opinions not altogether orthodox, which he refuſed to diſclaim, though he had never confeſſed himſelf the author; a motion was made to expel. When, after much violent declamation, and great zeal diſplayed in *vindicating* the honour of the *Almighty*, the accuſed thus ſpoke: "I am willing to acknowledge "myſelf the worſt man in this Houſe;

the authority of Scripture, by the firſt four general councils, or by any general councils, which followed the Scriptures as their rule, or by ſuch other doctrines as ſhould hereafter be denominated hereſy by the parliament and convocation. 1 *Eliz. cap.* 2.

" but I pray you, gentlemen, to con-
" ſider, that when I am gone, the
" evil will ſtill remain; and if you
" continue expelling the worſt * mem-
" ber, I fear it will reach the chair
" at laſt."

Let us now examine this power of expulſion, upon the ſeveral grounds which have been ſuggeſted. The moſt

* It is impoſſible to fix limits when opinion is once admitted. Scarce any cauſe of deprivation can be ſuggeſted, which may not prevail, by analogy at leaſt to ſome precedent already on the journals of the Houſe; and if accumulative charges are allowed, life, character, &c. taken into the account, the field becomes infinite, and can be bounded only by the fluctuating opinion of a majority. What is this but to give an abſolute negative in elections? To make the repreſentative body at the ſame time co-electors and judges? And to confound every order of the ſtate?

obvious,

obvious, and much the beſt foundation of this claim, will appear to be a continual exerciſe thereof for two centuries, acquieſced in by the legiſlature; and it may be urged, that ſhould this not be deemed ſufficient to eſtabliſh a right, there can be no end of innovation.

In every queſtion between the people and their governors, concerning the general diſtribution of political power, little regard muſt be had to former examples, when theſe in any degree claſh with fundamentals. The principle upon which precedents are allowed the greateſt authority, in the *exerciſe* of acknowledged powers, eſpecially the judicial, does not apply to the preſent caſe. In directing the judgments of our courts, they limit the

the otherwiſe fluctuating opinions of ſucceſſive judges, make known the rule of conduct preſcribed to the ſubject, and prevent the operation of thoſe various affections, which, tho' inſeparable from human nature, are never found to be the ſame in any two individuals. Should a rule be once eſtabliſhed incompatible with the order and good government of the ſtate, there is a ſuperior authority to whom the people may have recourſe, who, by declaring their will, enact that no ſuch rule ſhall prevail in future. Thus the Law becomes fixt and certain, and is truly a pillar of cloud by day, and a pillar of fire by night, to guide and direct our ſteps. But between the people and their governors, there can be no human tribunal; unleſs therefore the diſpute be adjuſted by

by a reference to what * is acknowledged on both ſides, one only appeal can lie, that dreadful one mentioned by Mr. *Locke*, an appeal to the God of Battles. The precedents here too are eſtabliſhed by one of the parties, without attracting the attention of the nation; ſhould uſurpation confer a right, ſuch a principle could ſerve no other purpoſe, but to encourage new encroachments; and any power, however arbitrary or iniquitous †, might thus be ſurreptitiouſly engrafted on a like uſage. Neither King, nor Lords

* The preſent diſpute *may* be thus ſettled. The power claimed is irreconcileable to the ſole excluſive legiſlative authority in King, Lords, and Commons.

† I mean not to inſinuate a poſſibility of ſuch uſurpation in our preſent Houſe of Commons, but to argue only againſt the principle, as eſtabliſhing a right to the power by *ſuch* a preſcription.

have any pretence to interfere between the people and their repreſentatives, who form a diſtinct independent order in the ſtate. The bulk of the nation are not the moſt refined reaſoners: they feel oftener than they think; and inſtead of oppoſing a precedent from prudent apprehenſions † of remote

† How much the particular effects of a meaſure are apt to influence our minds, may be gathered from what paſt lately among ourſelves. The neceſſity for ſtopping the exportation of corn, to prevent a famine, was ſo urgent, that ſome of the ableſt men in this country were unwarily led into a defence of a diſpenſing power in the Crown. They thought it impoſſible the authority, ſo beneficial in its effects, ſhould be illegal: not adverting to a principle ſufficiently eſtabliſhed in our own hiſtory, that the utility of the *general* power, and not of the *particular* exertion, determines its legality. When Queen *Elizabeth*, to reſiſt the *Spaniſh* Armada, iſſued orders to the ſeveral ports, commanding each to furniſh

mote conſequences, they ſeldom dream of reſiſtance, till ſome unexpected conſequence ſhews them the full extent to which the precedent † may be carried. The obſtinacy or firmneſs (call it which we may) of the *Middleſex* Freeholders, has now produced ſuch a criſis. The power of expulſion, with all the latent train of conſequen-

furniſh a certain number of ſhips, ſuch was the alacrity and obedience of the nation, that many places fitted out double the number deſired; but when *Charles* the Firſt made uſe of the very ſame expedient, to govern without a parliament, it became one of the chief cauſes of thoſe unhappy diſcontents, which at laſt terminated in a civil war.

† Thus the Norman lawyers, from the originally ſimple principles of feudal connection, eſtabliſhed all thoſe oppreſſive claims of the ſuperior lord, which, though ſomewhat defined from time to time by parliament, were not finally aboliſhed before the reign of *Charles* the Second.

ces, is drawn from that darkneſs and obſcurity in which it hitherto has ſecurely ſlumbered, and muſt ſtand or fall by its own ſubſtantial merits.

Is it neceſſary to add, that the acquieſcence of the legiſlature is of no validity, where the * body claiming has an abſolute negative in legiſlation?

The doctrine here advanced is by no means new in this country. The claims condemned in the famous Petition of Right, were certainly ſome of them contrary to expreſs laws, all inconſiſtent with a regular limited government, but were nevertheleſs ſup-

* It is well known that the Houſe of Commons are very juſtly ſo jealous of their privileges, that any bill reſpecting theſe, begun in the other Houſe, would be for that reaſon alone rejected by them.

ported

ported by the notorious uninterrupted * practice of above a century, acquieſced under by the legiſlature, nay ſome of them indirectly affirmed by the Repreſentatives of the people. Queen *Elizabeth* exerciſed throughout her reign above twenty articles of prerogative totally incompatible with a limited government; yet ſo little jealouſy was entertained, ſo little were the rights of the people underſtood to be invaded, that theſe acts of power are rarely mentioned by the ordinary hiſtorians, and this Princeſs for above forty years preſerved the

* Foreign juriſts have affected to condemn the practice of our Courts as abſurd, for conſidering no laws as obſolete, whereas theſe in every other country may be abrogated by a contrary uſage. This peculiarity in our juriſprudence flows from the nature of our government.

con-

confidence and affections of her people in a much higher degree than any Sovereign who ever ſat upon the *Engliſh* throne. Had her ſucceſſors enjoyed an independent revenue, with her conſummate prudence, we muſt probably have ſubmitted to the ſame fate with our neighbours on the continent, and at this inſtant have languiſhed under a government unreſtrained by law. The people, however, recollected in proper time, that the Parliament alone were Legiſlators, and there was an end of the tyranny.

The advocates for this power of expulſion have likewiſe ſaid, that the Houſe, by their *judicial* authority, *declare* Mr. Wilkes *ſhall* not ſit among them. Is not this confounding the eſſence of things, the legiſlative with the judicial? Is it not perverting, nay

nay inſulting the underſtandings of mankind? Of what nature is this Judicature? Here is plainly no adjudication of a civil right. Whether Mr. *Wilkes* was originally capable of being elected, has never yet been made a queſtion. He was admitted a Member; he enjoyed every privilege annexed to that character, as far as his ſituation would permit. He is even acknowledged as ſuch by the very *vote of expulſion*. Is criminal juriſdiction claimed? The Houſe of Commons will be little indebted to thoſe who defend this very extraordinary poſition. They themſelves plainly conſidered the authority by which they acted in a very different light. Would they otherwiſe have admitted an *accumulative* * charge? Would they a ſecond

* It is evident that this practice once admitted, a man may be acquitted by a majority on each

cond time have puniſhed a man who had already received ſentence from the proper * tribunal? Does a man become more criminal, becauſe he is the object of popular favour? Or can cenſure thus inflicted anſwer the purpoſe of public example, and deter others from the commiſſion of crimes?

each diſtinct charge, and yet condemned upon the whole. Is not this introducing confuſion into a proceeding, upon which it is above all others the intereſt of mankind to diſtinguiſh.

* The diſtinction of the *ſame* and *different* judicatures (*vide* Speech, &c. lately publiſhed) is not to be maintained. Even in civil cauſes, it is a ſufficient plea to ſay the affair is depending in another Court. In criminal matters no man can be a ſecond time queſtioned for the ſame offence. The laſt Houſe of Commons expelled Mr. *Wilkes* for a crime, of which he was then convicted in a Court of Law, and to undergo the proper puniſhment. A plain proof they acted not as Judges.

The proceedings of the Houſe are inconſiſtent with the cleareſt principles of natural juſtice, upon the ridiculous ſuppoſition of a criminal juriſdiction. It is the peculiar felicity of our country that the Members of both Houſes of Parliament ſubmit as ſubjects to thoſe laws, which are enacted by themſelves in quality of Legiſlators. It is a miſtake, therefore, to imagine the Houſe of Commons have a criminal juriſdiction even over their own Members. They may indeed puniſh and repreſs indecencies in the Houſe, becauſe order is neceſſary to every aſſembly, and no other power could enforce the obſervance without infringing the freedom of debate and independance of their legiſlative capacity. They meet ſolely as Legiſlators, and every power or privilege they poſſeſs, will be found incidental to this origi-

nal * character, and immediately derived from their neceſſary independence.

A late writer † obſerves, that the Sentence (as he terms it) of Expulſion

* Such as determining Elections; puniſhing thoſe who attack a Member for his conduct within doors; freedom from arreſts, &c. The Houſe do not even compel their Members to pay their debts. Perhaps this might be as reaſonable an exertion of *judicial* authority, if they poſſeſſed ſuch a power. The right of determining Elections ſtands on its own peculiar grounds.

† See the Caſe of the late Election for the County of *Middleſex* conſidered, &c. The ſame writer very ſeriouſly aſks, "Shall *they* be at li-"berty to reſtore him, who have no power to "expel him?" And as gravely anſwers, "Certainly not!" Had his printer by miſtake reverſed the propoſition, how would the following queſtion have aſtoniſhed the accurate lawyer? Shall *they* be at liberty to expel him, who have no power to reſtore him?

has

has been inflicted ſometimes for offences againſt *Religion*, ſometimes for offences againſt the *State*, ſometimes for offences againſt *Morality*, and at other times againſt the *Houſe* merely. He has here very liberally beſtowed all the powers formerly exerciſed by the Courts of High Commiſſion ‡ and Star-Chamber. This catalogue contains every crime which man can commit. Every offence which zealous bigots may impute, artful politicians may frame, or perverted morality condemn. A ſevere ſcrutiny is here eſtabliſhed into the boſoms of men, into the delicate privacy of domeſtic life, for matter which may exclude a man

‡ Theſe Courts puniſhed by deprivation of offices, by impriſonment, and fine. The Houſe of Commons have formerly levied fines upon perſons expelled. Sir *Robert Walpole* was expelled and impriſoned.

from repreſenting his country in Parliament. The ſame writer might have added, that the forms of proceeding are faithfully copied from theſe applauded originals. No Accuſer, diſtinct from the Judge; no Record; no written Charge; not even Witneſſes examined in preſence of the party. Lives there a man in this free country, who does not bluſh to own ſuch a tribunal for the puniſhment of crimes? Forms are eſſential to juſtice: they ſerve to diſtinguiſh the law from the facts, and mark with ſuch preciſion every ſtep of the proceeding, that no room is left for ingenuity to pervert, or ſophiſtry to confound. If theſe are preſerved, crimes of State will ever be unknown; and if Judges of the fact are taken from the body of the people by lot, while the ſtanding Judges pronounce the penalty of the law, their

ſentence

ſentence will, ſtrictly ſpeaking, be the ſentence of the law itſelf.

" Suppoſe, for the ſake of argu-
" ment," ſays the writer abovemen-tioned, " that the people, inſtead of
" aſſembling by their Repreſentatives,
" had been perſonally convened; tho'
" in ſuch caſe every man would have
" a right of being preſent at an aſ-
" ſembly where his own intereſt,
" among that of others, is in agita-
" tion; yet will any one ſay, that he
" may not forfeit that right, by inde-
" corum, by treachery, by immora-
" lity, &c? And are not the majo-
" rity of the aſſembly the *ſole judges*
" of his fitneſs to continue a Mem-
" ber? If they judge him incapable,
" may they not expel him? And can
" he ever acquire a ſeat in that aſ-
" ſembly again againſt the ſenſe of

" the majority?" There is one ſmall circumſtance indeed entirely unobſerved by this *accurate* and *conſtitutional* Lawyer, which makes the whole difference between us. The people (*i. e.* the nation, not the Commons only) have, upon *this ſuppoſition*, the ſupreme legiſlative power. They are themſelves aſſembled: they are the State itſelf. The perſon expelled moreover is, in the *caſe* ſtated, cut off from the community. He is an alien, an outcaſt. If he continues with his former aſſociates, yet he ceaſes to be a citizen, and becomes a ſlave; is governed by the *will* of others, by force. Happily, however, the Houſe of Commons in this country pretend to no ſuch power. They affect not a legiſlative capacity. * This author might, with

* The learned author abovementioned conſtantly argues from what the Houſe *have* done, to

with equal propriety, have endeavoured to prove the preſent Members of that Houſe the lineal deſcendents and true repreſentatives of *Adam*, and as ſuch entitled to all authority on earth from the immediate gift of the Creator.

The ſame author is not more fortunate when he endeavours to illuſtrate his ſubject from voluntary aſſociations. Here the Union is diſſolved by the ſame unreſtrained *will* which created it. As each individual may withdraw himſelf from the body; ſo any number (a *majority* or *minority*) may ſhun an individual. But Dr. *Blackſtone*'s Commentaries have taught me to believe, that the Repreſentatives of the people in *Great Britain* are elected according to a *precedent* law.

to prove what they may do. If this reaſoning be concluſive, their power is indeed unbounded.

We

We are told the *Romans* had their ſingle officer, who could degrade a Senator from his rank and ſtation. And where can the cenſorſhip be ſo ſafely veſted as in the repreſentative body of the Commons? Is it neceſſary to ſay, the authority of the Senate at *Rome* reſembled more the power of our King than of our Houſe of Commons? The power of the Senate was chiefly executive. *Rome* was moreover a republic eſtabliſhed on *manners*; our government is a monarchy founded on *laws*. In the firſt, *manners* are ſacred; in the latter, *laws*. It was not the loſs of the cenſorſhip at *Rome* which corrupted the manners of the people, but the corruption of manners deſtroyed the authority of the * cenſor.

It

* Their cenſures no longer conveyed infamy. The office and not the crime were become odious.

Monteſquieu

It ſeems however we are under a miſtake in ſuppoſing the power of expulſion

Monteſquieu on this ſubject obſerves, "that at "*Rome*, which in its early years was a kind of "ariſtocracy, the Senate did not fill up the vacant "places in their own body; the new Senators "were nominated by the Cenſors." *B.* 5. *chap.* 3. The ſame officers that degraded, here elected. Afterwards all who had filled certain offices were entitled to ſeats in the Senate. *Monteſquieu* thinks that this power of a cenſorſhip ſhould exiſt only in republics. The peculiar buſineſs of theſe officers (for they were firſt two in number) at *Rome*, was, to correct thoſe ſmaller offences which were not the objects of the laws, and to preſerve the manners of the citizens untainted. Their power was greateſt, when the laws were moſt ſimple. "The Cenſors, and before them the Conſuls, "formed and created, as it were, every five years "the body of the people; they exerciſed legiſla-"tion on the very body that was poſſeſſed of "the legiſlative power." *Spirit of Laws*, *B.* 11. *chap.* 16. Their power entered alſo into domeſtic life; and there is an inſtance of a citizen compelled by the Cenſor to put away his then wife, that he might give children to the republic.

expulſion in any degree to reſemble a legiſlative authority. *It is the uſage of Parliament, made law by the tacit conſent and acquieſcence of the legiſlature* *. In former times our Kings exerciſed a power of regulating every part of government by † proclamation, ſomewhat

Upon the plan of a cenſorſhip our Houſe of Commons would have abundant employment, though not altogether compatible with *law*, which in this country forms the beſt protection of the people.

* Anſwer to the Queſtion ſtated.

† Queen *Elizabeth* had taken offence at the ſmell of Woad; and ſhe iſſued an edict forbidding the cultivation of that uſeful plant. She was alſo pleaſed to take offence at the long ſwords and high ruffs then in faſhion: ſhe ſent about her officers to break every man's ſword, and clip every man's ruff which was beyond a certain length. This practice reſembles ſomewhat the method employed by the great Czar *Peter* to make his ſubjects change their garb.

Sir

what analogous to the temporary legiſlation of the *Roman* Senate. As Parliaments were ſeldom called together by the Sovereign, and when aſſembled, little affected the office of reformers, the Court of Star-Chamber took care to ſee thoſe proclamations more rigorouſly executed than the laws themſelves. This power, however, which has long been conſidered as illegal, without any expreſs declaration of the legiſlature, is in every reſpect, but its extent, exactly ſimilar to that under conſideration; which is the *uſage of Parliament* for *one* Houſe of Parliament to do what they pleaſe without conſent of King or Lords. The exerciſe of this power

Sir *Chriſtopher Pigott* was expelled for ſpeaking *diſreſpectfully* of the *Scottiſh* nation — Mr. *Aſgill*, for believing that a man *might* go to Heaven *without dying*.

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of expulſion is not limited by rule or precedent. It is confeſſedly an act of *will*; and if ſuch *will* can deprive the people of their Repreſentative, I confeſs, my underſtanding cannot diſcover why the Houſe of Commons may not vote the Lords an uſeleſs part of the conſtitution. The Journals of the Houſe ſufficiently demonſtrate that expulſions have not only been acts of will, but of violence and caprice. A power of diſpenſing with laws was for ſeveral ages exerciſed by the Crown; yet Parliament, at the Revolution, found no difficulty in declaring this claim illegal, and inſiſting upon all the articles ſpecified in the Bill of Rights, as "the undoubted *Rights* and "*Liberties* of the nation; and that no "Declarations, Judgments, Doings, "or Proceedings, to the prejudice of "the people, in any of the ſaid premiſſes,

" miſſes, ought in any-wiſe to be " drawn hereafter into conſequence or " example." If the foundations of a government are not held ſacred, all pretence of law becomes a cruel mockery of the people. Legiſlation in the three eſtates is a mere fallacy, if the reſolutions of one Houſe of Parliament can innovate upon *legal* rights. Men may affect to believe, and endeavour by ſophiſtry to inculcate, that " if the " Houſe of Commons have aſſumed " or exerciſed legiſlative power in the " meaſure before us; ſo too do the " Courts of *Weſtminſter-Hall* in their " daily determinations according to " the maxims of the common law, " and their daily proceedings accord- " ing to their ſeveral *eſtabliſhed* rules." What is *eſtabliſhed?* And how? Does not one deciſion of a Court in *Weſtminſter-Hall* fix and make known the Law?

Law? Are not Judges puniſhable if they depart from it in future? But does one expulſion become a rule for the next? Or have the Houſe *declared* the man incapable of ſitting, who is convicted of a libel? What *Law* then have they *made known?* This is the characteriſtic of judicial power; *Their* act is plainly an act of *will*; and when connected with a right of * determining the conſequences, is completely legiſlative.

It

* The Preſident *Monteſquieu* thinks the ſeparation of the legiſlative and judicial powers neceſſary to the exiſtence of liberty. The right of determining their own elections muſt, for reaſons peculiar to our government, be united with that part of legiſlation poſſeſſed by the Commons; but the confuſion (not to ſay abuſes) naturally attending this union, makes it highly proper to keep theſe powers ſeparate and diſtinct, where the ſame neceſſity does not exiſt. The judicial character of the Houſe of Lords is ſcarcely

an

It is yet ſaid, ſhould the Houſe of Commons not poſſeſs a power of expulſion, *unworthy* perſons might be returned. Cannot laws provide a remedy? Arguments have been drawn from conſiderations of dignity. What ſhall we ſay? Can the dignity of legiſlators be better ſupported, than by ſetting an illuſtrious example * of ſubmiſſion to the Law?

Thus

an exception to this rule: they act only as a court of appeal; and the cauſe is commonly ſo moulded, by the forms of inferior courts, through which it paſſed in its way to this higher tribunal, that the matter to be diſcuſſed is merely ſome general abſtract queſtion of Law. The opinions of the Judges are always taken, and have deſervedly the greateſt weight. Nevertheleſs, it might not be impoſſible perhaps to point out ſome errors in point of juriſdiction, which have ariſen from uniting theſe different characters of judges and legiſlators in the ſame body.

* The behaviour of *Henry* the Fifth, when Prince of *Wales*, is mentioned in this view, by all

Thus have I endeavoured to prove, that every *diſqualified* candidate is *no* candidate, and that all votes given to him are abſolutely void: that a perſon expelled, by thoſe inveſted with proper authority, muſt be incapable of readmiſſion, becauſe *inconſiſtent* rights cannot ſubſiſt at the *ſame time*; and that another muſt be choſen, leſt the governing body ſhould be maimed or imperfect: that theſe poſitions have been repeatedly eſtabliſhed *as law* by the *known authorized Judges*: that even if theſe queſtions had been new, the authority of the Houſe of Commons acting within their *acknowledged juriſdiction*, muſt now be ſubmitted to, unleſs we mean to diſſolve

all hiſtorians, as an inſtance of the greateſt magnanimity. The ſame magnanimity diſplayed throughout his government, enſured the willing obedience of the people.

the government, by an appeal to the collective body of the people.

Having cleared the ground, I then proceeded to examine the original power of expulsion, and found it to be (in the extent contended for) completely legislative, and so far incompatible with the *known acknowledged* constitution of our government.

It may yet be proper to add a few words on a distinction which I have endeavoured to support. In every state the separation of the legislative and judicial powers, is necessary to the establishment of liberty. The president *Montesquieu* has not scrupled to mention this as the great distinction between the moderate monarchies of Europe, and the despotic governments

of the Eaſt; that in the former, while the prince retains the legiſlative authority, he entruſts the judicial to his ſubjects; whereas in the latter, both theſe powers are veſted in the ſame magiſtrate. Mr. *Locke* has carried the ſame principle ſo far, as to affirm, that "the *legiſlative* or ſupreme au-"thority, cannot aſſume to itſelf a "power to rule by extemporary, ar-"bitrary decrees, but is bound to "*diſpenſe juſtice*, and decide the rights "of the ſubject, *by promulgated ſtand-"ing laws, and known authoriſed judges.*" Indeed where the legiſlative authority is exerciſed by enacting *general* laws to take effect in future, *promulgated* without any view to a particular object: where an improper exerciſe of this power is prevented by giving a negative voice to each diſtinct

order

order of men, who have diſtinct and ſeparate intereſts: where the interpretation of theſe laws is by ſtanding Judges, made independent in their office for life, whoſe deciſions being preſerved, render civil rights fixt and certain: where ſuch forms of juſtice are eſtabliſhed, as may ſeparate the ſeveral queſtions in a cauſe, and diſtinguiſh every ſtage of the proceedings ſo accurately, that no opportunity be left for ingenuity to pervert, or ſophiſtry to confound: where matters of fact are decided by the verdict of judges choſen by lot from among the people: where in criminal caſes, the accuſed, by a privilege of rejecting a certain number, may chooſe his judges, in conjunction with the law: where a jury ſo formed, may (when a complicated queſtion ſhall appear to require

it) determine both the law and the fact: where, laſtly, the whole proceedings of juſtice are openly tranſacted in the public view; there, and there only, can the liberty of the ſubject be the direct end of the conſtitution.

Though the ſeparation of legiſlative and judicial powers may now appear eſſential, yet the peculiar form of our government renders one exception neceſſary. The repreſentative body of the Commons, muſt have a ſole excluſive juriſdiction to determine the elections of their own members, or they would inſtantly ceaſe to be independent. But no reaſon can be given for extending this judicial authority beyond what independence may require.

Whether

Whether a power to ſend an offending member back to his conſtituents, for them either to confirm or reprobate their former choice, might not be properly veſted in the Houſe of Commons, may well deſerve the conſideration of the legiſlature. The Houſe of Commons appear to have diſclaimed this (although *limited*) authority, by pertinaciouſly inſiſting upon the place-bill, when twice rejected by the Lords: ſo different is the conduct of men, when public regulations are propoſed; and when reſentments are awakened by the deſignation of a particular object. All I mean to contend for is, that no ſuch limitation of authority can exiſt, but by the *expreſs words* of an Act of parliament, the Houſe of Commons being the *ſole judges* of elections: and that

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the general power of expulſion, as *claimed* and *exerciſed* by the Houſe, is inconſiſtent with the known eſtabliſhed conſtitution of government in *Great-Britain*.

F I N I S.

POSTSCRIPT.

IT is amuſing to obſerve the ſlow but regular progreſs of the mind in the examination of a claim guarded by a venerable appearance of antiquity. We ſcarcely dare to controvert what our anceſtors have uniformly admitted, and regard as ſomething more than ſacred the origin of that power, which loſes itſelf from our ſight in the obſcurity of remote ages. This natural diſpoſition of the mind, implanted in us for the wiſeſt purpoſes, is the great foundation and beſt ſecurity of all government. The ſame diſpoſition, however, ſometimes produces a lethargic indolence in the people, which may enable artful tyrants to impoſe their ſhac-

kles upon mankind, under the ſpecious diſguiſe of ancient forms. Had the Stuarts poſſeſſed this art, or rather had not the imprudent continuance of the Spaniſh, and mad commencement of the French war, by reducing Charles the Firſt to the moſt extreme neceſſity †, rendered too frequent the exertion of ſuppoſed Prerogative on a ſubject where the people were leaſt accuſtomed to bear it, probably the noble ſyſtem of Britiſh Liberty had not now exiſted, the admiration and envy of ſurrounding nations,

† The revenues of the crown, including the cuſtoms, which were never voted during the reign of Charles I. were not equal to the ordinary charges of government. For extraordinary ſupplies, he had no reſource but the Parliament, who were not yet accuſtomed to contribute liberally; or his prerogative, which, in other words, was claiming a power to impoſe taxes without their conſent.

The

The true ground of quarrel between Charles and his parliament was the aſſumption of legiſlative authority; but the nation was not immediately ripe for the full proſecution of this noble principle, That Parliament alone are Legiſlators. Habits, more than reaſon, we find in every thing to be the governing principle of mankind.

Impoſitions had been laid on commerce by the ſole authority of the Crown; and the practice being repeated by James I. the Houſe of Commons introduced a bill for aboliſhing theſe new impoſts as illegal, which was rejected by the Lords; and the nation readily acquieſced in their deciſion. It had been uſual for each King to levy tonnage and poundage from the moment of his acceſſion; and the firſt Parliament of each reign had ever, by vote, confer-

red on the Prince what they already found him to poſſeſs. The firſt Parliament of Charles the Firſt having formed the deſign of reducing their Prince to dependance, voted it for one year, with a *profeſſed* intention only of examining the new impoſts: but the Peers, jealous of the incroaching ſpirit of the Commons, again rejected the bill. Charles continued to levy theſe duties by his own authority; and the people, *accuſtomed* to this exertion of royal power, were little diſpoſed to examine the nature of his claim. The ſubſequent ſtruggles between Privilege and Prerogative raiſed a ſpirit of enquiry in the nation, and ſucceeding Parliaments excited doubts in every one. Yet it was not till the Petition of Right had covertly condemned it, by declaring (on occaſion of the forced loans) all levies of money from the ſubject

without

without conſent of Parliament, illegal, that even that Houſe of Commons would venture openly to condemn the claim, or queſtion the officers concerned in the collection.

After all pretenſions to legiſlative authority had been wreſted from the Crown, by the violent death of one, and the dethronement of another of our monarchs; after it had been * expreſsly enacted at the Reſtoration, that neither one nor both Houſes of Parliament poſſeſs legiſlative power, in any matter, without the concurrence of the Crown; a reaſoning man might expect a quick and ready reſiſtance from the people to every attempt againſt this firſt principle of our Conſtitution. Though the progreſs of enquiry is from

* To affirm this incurs a forfeiture of goods and chattels.

various

various cauſes leſs ſlow than in former times, we may yet obſerve the opinions of men not immediately unfolding, but enlarging by degrees in the late important affair of the Middleſex election. At firſt the right of expulſion *ad infinitum* was admitted on all hands; that incapacity followed was denied by few; nay, the vote of a void election paſſed without oppoſition in the Houſe, upon no better * reaſon than that reſolutions once made are binding during that ſeſſion. The firſt ſtand was made on the admiſſion of Mr. Lutterell. Self-evident as the conſequence is, this was the only part for which the nation had

* Thus a mere rule of order (intended to prevent impertinent repetitions of the ſame motion by individuals) was made to determine the moſt eſſential rights of the community, when theſe came neceſſarily before the Houſe in a courſe of legal adjudication.

not

not ſeen a precedent, and the novelty rather than the principle firſt excited alarm. Men who wrote in their cloſets found it neceſſary to controvert the point of incapacity; till, after frequent diſcuſſion, latter publications, more liberal, have attempted to limit, upon conſtitutional principles, the power of Expulſion itſelf. Afraid to encounter the muſty records of parliamentary violence, thoſe writers ſeem not to be ſufficiently aware, that the ſame precedents on which Expulſion muſt reſt, will extend the power much farther than the preſent occaſion requires.

I have already given ſome reaſons why precedents ought to have little weight in eſtabliſhing the power of Expulſion; and have endeavoured to ſhew, that the ſame fundamental principle of our government, which juſtly overthrew

overthrew the boundleſs prerogatives of the Crown (ſupported by very ancient and uniform practice) is ſufficient to decide the preſent queſtion. Let us now, in compliance with thoſe who dare not think beyond the trammels of authority, examine theſe boaſted precedents, and ſee what power can be thence derived.

The firſt obſervation that occurs is, That Expulſion has been voted for actions which evidently are no crimes, for inoffenſive ſpeculative opinions, ſometimes even for defending the conſtitution*. If, therefore, this be *Law*, a ma-

* Sir Chriſtopher Pigott was expelled for ſpeaking *diſreſpectfully* of the King's native country, upon a meſſage from the King to the Houſe. Mr. Aſgill, for being ſuppoſed to believe that a man *might* go to heaven without dying. Sir Edward Deering for publiſhing a book, in which he

a majority may expel whom they pleaſe, perhaps, the moſt independent member of the Houſe.

Theſe inſtances differ likewiſe as to the effects intended to be produced. Sometimes the reſolutions ſay expreſsly *for life, for ever:* ſometimes *during the continuance of the preſent Parliament:* ſometimes the members are merely expelled, and afterwards re-admitted. Throughout the journals the degree of diſability muſt depend on each particular vote. Is not this plainly aſcribing to a reſolution of the Houſe of Commons

he doubted whether the Houſe of Commons could make laws without the conſent of King or Lords. Mr. Steele and Sir Robert Walpole (whatever offences might be imputed to the latter) were certainly expelled for defending the parliamentary right of ſucceſſion in the houſe of Brunſwick.

(if precedents be law) an authority, which Mr. Locke denies even to the whole Legiſlature * ?

A ſtrong argument againſt the power of Expulſion maybe drawn from the effects it has already produced. The hiſtory of the civil war abundantly proves, that the popular leaders of the long Parliament could never have ſubverted monarchy; probably, could not even have drawn the ſword againſt their ſovereign, without a well-timed exertion of this pretended privilege. Before his imprudent attempt upon the five members, Charles

* See above, p. 58. and note to p. 27. To which we may add, in the words of Cicero, "Vetant leges ſacratæ, vetant duodecim tabulæ, "leges privatis hominibus irrogari; id enim eſt "privilegium. Nemo unquam tulit, nihil eſt "crudelius, nihil pernicioſius, nihil quod minus "*hæc civitas* ferre poſſit."

poſſeſſed a very great party among the Commons, which, had every new cauſe of diſguſt been carefully avoided, would ſoon have become the majority, from the odium attending the violent meaſures employed againſt him. The Houſe of Peers muſt ever be the natural guardians of the throne, and their authority could not have been overcome without ſtill greater outrages, which muſt in the end have drawn diſgrace and ruin on the authors. The imprudence of the King deſtroyed in an inſtant all theſe goodly proſpects. The fury of the people ſwept away, like a torrent, all the ramparts of royal authority. The victory was purſued with impetuoſity by the ſagacious Commons, who knew the importance of a favourable moment in all popular commotions. The King was driven from his capital; his friends were diſ-

ſipated; and both parties prepared to decide the conteſt in arms.

No ſooner had the firſt inundation of popular violence in ſome meaſure ſubſided, than the friends to monarchy, who were leaſt obnoxious to the Commons, attempted to reſume their ſeats: but the Houſe immediately voted not to admit their own members, till ſatisfied concerning the reaſon of their abſence. Having thus ſhut the door * againſt all opponents, and purged the Houſe by farther Expulſions, the war commenced, under the auſpices of about ſixteen Peers, and ſcarce a moiety of the Lower Houſe. Such, however,

* They were not contented with this firſt advantage; for it appears by the Journals of the Houſe, that, a conſiderable time after this reſolution was taken, above forty members were expelled and diſabled within two months. Theſe were

however, was the general diſpoſition of the people, even in the midſt of theſe furious convulſions, that the Commons, afraid to ſhock eſtabliſhed opinions, or openly to avow their intention to ſubvert the conſtitution, invented a diſtinction, which in cooler times may appear ridiculous, of taking arms by the King's authority againſt his perſon; and for more than two years conſtantly amuſed the nation with negociations for peace, in which they certainly were not ſincere. Whoever conſiders to what ſtraits the leaders were frequently reduced by cabals

were not all abſentees; many appear to have been expelled for other offences. In juſtice, however, to this garbled Houſe of Commons, we muſt acknowledge them conſiſtent in their conduct; for at the ſame time that they expelled half their members, they voted their own ordinances to have the force of laws.

among

among the citizens, and even among ſome members of their own party, and the difficulty with which they from time to time evaded the general wiſh for peace, will entertain little doubt, but that, had moderate men regained their ſeats, the government would ſoon have been ſettled upon legal foundations, by a compromiſe between the King and Parliament.

The power of Expulſion is, moreover, repugnant to the great original principle upon which all the privileges of Parliament are founded. The aggregate *independence* of the body reſults from the perſonal independence * of each

* This is ſo ſtrictly true, that it is equally applicable to the loweſt as the higheſt right. The Freeholders of a county cannot exclude one of their number from giving his vote. If *they* cannot,

each individual. Why are members exempted from arreſts? Could the voice of the majority be free, while individuals were ſubject to controul? Or is a man leſs controuled, becauſe they are of the ſame Houſe to whoſe caprice he is compelled to ſubmit? Thoſe who conſider the nature of popular aſſemblies, will find it highly *expedient* (ſince ſuch is the faſhionable argument) to emancipate every member. With what celerity is any impreſſion conveyed throughout! The countenance, the voice, the geſture, all ſpread the contagious example, and

not, upon what principle, or pretence of principle, can the neighbouring counties, or even all the Freeholders in Great Britain? If no power on earth leſs than the whole Legiſlature can expel an individual voter, how can it annihilate the collective ſenſe of the county in the perſon of a repreſentative?

propagate

propagate from breaſt to breaſt the general flame. If happily ſome more temperate eſcape the furious vortex of the common paſſion, ſhall theſe men hold their rights at the will of their companions? Shall we fooliſhly throw the reins on the neck of madneſs, and render impoſſible a return of reaſon?

The Houſe of Commons derive their authority from the people. To what purpoſe erect ramparts againſt thoſe whom they are choſen to repreſent, whoſe intereſts are in truth their own? It is impoſſible for the *repreſentative Body* to entertain views different from their *conſtituents*. This would be a ſpecies of political ſuicide which ought never to be ſuſpected. Let every barrier againſt the Crown be continually ſtrengthened; but we may juſtly ſuſpect the integrity of a commander, who pretends to hold a for-

a fortreſs for his prince, yet ſhuts the gate againſt his maſter.

I ſhall ſtate a caſe which, I think, will explain the nature of derivative power. Suppoſe nine independent towns, having intricate claims upon each other, ſhould agree to ſend each a repreſentative to an aſſembly, and give authority to the majority of ſuch aſſembly to regulate and adjuſt their reſpective rights: Will any man ſay, that each town may not ſend what repreſentative they pleaſe? Upon what principle could the *repreſentative* body pretend a right of controuling their choice? Each town muſt judge of the *fitneſs* of its own deputy; for this is the eſſence of *election* or *choice*.

It was foreſeen, that improper deputies might be ſent; a previous agree-

ment was therefore made, defining the neceſſary qualifications both of the electors and elected. This agreement is the great fundamental conſtitution of the aſſembly, which nothing leſs than the unanimous conſent of all the towns can abrogate or annul. This is the *precedent* law of the community, from which the repreſentative body derives its exiſtence; which it cannot change or ſubvert, without deſtroying the foundation on which it ſtands. A power of Expulſion is here clearly inconſiſtent with nature and firſt principles. Suppoſe for a moment, that a majority of this aſſembly were prevailed upon to expel two of their body; would any man in his ſenſes contend, that any act of four (a majority of the remaining ſeven, though a minority of the whole) would be concluſive * upon the

* It may be ſaid, the Towns might in all events

the rights in diſpute? That the ſeveral Towns would be bound to ſubmit to their judgment, or even to that of the ſeven? The courts of law in this country have determined reſpecting corporations, that the excluſion of *one* member, upon a miſtaken opinion of right, will vitiate every ſubſequent act, even a neceſſary election of magiſtrates, though all the other members were *unanimous* in their choice. With ſuch

vents refuſe to ſubmit, where there is no ſuperior authority to compel them; and that the diſpute (as in all ſuch-like caſes) muſt be decided by force alone. We conſider the *right* merely: and the judgments of our courts in Weſtminſter-Hall will ſufficiently eſtabliſh the principle contended for. Any ſtudent of the law will inform us, that an award made by two arbitrators, when a third ought to be preſent, (though the judgment of the two in the preſence of the third will be ſufficient) yet is clearly void if he be abſent. The power of arbitrators is in this reſpect analogous to that of the aſſembly above mentioned.

jealouſy do the laws of this country protect the franchiſe of each individual! A ſtrict application of the principle above mentioned might endanger the authority of the preſent Houſe of Commons.

To make the truth of our reaſoning more evident, let us ſuppoſe this aſſembly poſſeſſes a part only of the governing power in a larger community: that the *ſupreme will*, or legiſlative authority, reſides in this aſſembly, jointly with a great magiſtrate and a body of nobles: that this authority had been conſtantly exerciſed in conjunction with them, upon the ſame ſubject: and that frequent regulations reſpecting qualifications of candidates had been eſtabliſhed by the joint concurrence of the three Powers. Can a reaſonable being think, the will of *one* aſſembly ought

to

to change theſe eſtabliſhed * qualifications, unleſs his confeſſor has taught him to believe, that a third is equal to the whole? I have before proved, that Expulſion is a deprivation by *will* of an acknowledged right, and as ſuch it can be effected only by the joint concurrence of thoſe who poſſeſs the legiſlative power in the ſtate †.

We

* Expulſion does more than *change* theſe qualifications: It ſubſtitutes the momentary will of a majority in the place of all other qualifications. What is this but to annihilate all idea of a precedent Law?

† There is an eſſential diſtinction between *adjudging* diſability in a doubtful caſe, where no precedent is found, and *creating* one (after the member is once admitted as *legally* choſen) by the mere operation of *will* without rule. This diſtinction between legiſlative and judicial power cannot be too often inculcated. While men are ſubject to the imperfections of their nature, many

natural

We are told by ſome, that Expulſion excludes during the preſent Parliament. Others maintain, that a member *may* be expelled, but is immediately capable of re-election. Does the extent of *duration* change the nature of an injury? Or authoriſe any power to inflict it? Can men be deluded by nominal diſtinctions? Or do theſe Doctors mean only to affront our

natural diſabilities will occur, which are to be found in no written code of laws, *viz.* ideocy, lunacy, minority, *&c.* from the defect, diſorder, or imbecillity of reaſon: Some civil diſabilities, from an inconſiſtency of civil character, *viz.* peerage, holy orders, *&c.* Where queſtions of this doubtful nature occur, the judicial power muſt decide. This power is neceſſary in every community; and in the preſent advanced ſtate of laws in this country, few opportunities of abuſing it will preſent themſelves. Â ſuppoſed incapacity once adjudged to be legal, is ſettled and known for ever: whereas Expulſion makes a new law for every particular object.

under-

underſtandings? A member is deprived of his ſeat in the Houſe. By what authority? Not by any *judicial expoſition* of the Law? this is not pretended. Not by the Legiſlature? neither King nor Lords have been conſulted. By what authority? By a reſolution of one Houſe? By an ordinance of the Commons? The people of this country are not diſpoſed to meaſure uſurpation by ells or inches, but will reſiſt with firmneſs the firſt approach of deſpotiſm. To make a law for the puniſhment of an individual, may juſtly be regarded as an act of tyranny even in the whole Legiſlature, which nothing but neceſſity can palliate or excuſe: but to admit a claim of this nature from leſs authority, is at one ſtroke to lay level with the ground that noble ſyſtem of Liberty which our anceſtors

have erected and cemented with their blood.

We have ſeen the Conſtitution once already overturned by the uſurpations of an Houſe of Commons. Lead by ambitious demagogues, or ſubſervient to the call of a miniſter, this inſtrument may be equally fatal to the liberties of the nation. Shall we then ſubmit, without examination, to a power ſupported chiefly by ſuch an example? Or patiently yield to a pretended privilege, which has before involved our country in the miſeries of a civil war?

Whether the diſtinctions here attempted be juſt or not, or whatever *part* of the tranſaction may be erroneous, the people feel, that the right of Election, that great foundation and beſt ſecurity of all their other rights,

has

has been violently taken from them, by the *ſole* authority of *thoſe* who were choſen for their defence. Artificial opinions may for a time prevail, power and profit may continue to be the ſole objects with ſome; but the bulk of the Britiſh nation will ever aſſert, againſt all opponents, a free government of LAWS *general* and *univerſal*, extending an *equal* protection to every *right* of every ſubject in the realm.

FINIS.